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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Eric M., a Person Coming  
Under the Juvenile Court Law.

B302406  
(Los Angeles County  
Super. Ct. No.  
DK22411A)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Q.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Kim L. Nguyen, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, Veronica Randazzo, Deputy County  
Counsel, for Plaintiff and Respondent.

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## **I. INTRODUCTION**

Q.M., mother of now four-year-old Eric M. appeals<sup>1</sup> from the juvenile court's order terminating her parental rights to the child pursuant to Welfare and Institutions Code<sup>2</sup> section 366.26. Mother contends the juvenile court erred in terminating her parental rights because the Los Angeles County Department of Children and Family Services (Department) failed to inquire adequately about the child's potential Indian ancestry and failed to give a second notice under the Indian Child Welfare Act (ICWA or Act) when new information about father's potential Indian ancestry became known. We affirm.

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<sup>1</sup> The child's father is not a party to this appeal.

<sup>2</sup> All statutory references are to the Welfare and Institutions Code.

## II. BACKGROUND<sup>3</sup>

### A. *Section 300 Petition and Termination of Parental Rights*

The family initially came to the Department's attention in August 2016, when then 16-year-old mother was removed from her father's custody. Mother was placed in foster care, but maintained custody of the child who was then six months old.

On April 11, 2017, the Department filed a petition under section 300 that alleged, as sustained by the juvenile court, the following counts:

“b-2

“The child[’s] mother . . . is a recent user of marijuana . . . , which periodically renders . . . mother incapable of providing regular care for the child. The child is of such young age requiring constant care and supervision. Said conduct by . . . mother places the child at risk of harm.

“b-3

“The child[’s] father . . . has a history of criminal convictions, including but not limited to a conviction of Felon Addict Possess/Etc[.] Firearm. Such a history of criminal convictions on the part of . . . father endangers the child's physical health and safety and places the child at risk of serious physical harm and damage.” The juvenile court ordered the child removed from the parents' custody. In December 2017, the juvenile court ordered the child placed with paternal grandfather's cousin, Nicole M.

In October 2018, mother gave birth to I.M.

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<sup>3</sup> Except as needed for context, we limit our recitation of facts to those relevant to the ICWA issues.

On February 7, 2019, the juvenile court ordered the child (Eric M.) returned to mother's custody. On February 21, 2019, the Department filed a section 387 petition concerning the child alleging that mother failed to comply with the juvenile court's February 7, 2019, orders. At the same time, the Department filed a section 385 petition with respect to I.M.<sup>4</sup>

On April 15, 2019, mother pleaded no contest to the section 387 petition. The juvenile court sustained the petition, removed the child from the parents' custody, and denied the parents' request for additional family reunification services. The court set a permanent planning hearing.

On November 5, 2019, the juvenile court terminated the parents' parental rights and freed the child for adoption.

## B. *ICWA*

At the April 11, 2017, detention hearing, mother filed a Parental Notification of Indian Status form that included the statement: "Mother was informed by family that there is [I]ndian ancestry. Maternal Great[-]Grandmother Sylvia M[.] . . . would know which tribes." The statement included maternal great grandmother's phone number. The record does not contain a Paternal Notification of Indian status form for father who was incarcerated when the section 300 petition was filed.

The juvenile court noted that mother claimed possible Indian ancestry, but had not identified a tribe. The court withheld making an ICWA ruling and ordered the Department to investigate mother's possible Indian ancestry and to contact and interview maternal great-grandmother regarding Indian

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<sup>4</sup> I.M. is not a subject of this appeal.

ancestry. It further ordered the Department to send notices to the appropriate Indian tribes, the Bureau of Indian Affairs (BIA), and the Department of the Interior. The Department was to include detailed information regarding its ICWA investigation in its next report.

In the Department's May 23, 2017, jurisdiction/disposition report, the Department reported on its ICWA investigation. On May 3, 2017, a social worker interviewed mother who stated that she had no information regarding Indian ancestry. On May 4, 2017, maternal great-grandmother told the social worker that she was not aware of any American Indian ancestry in her family. Maternal great-grandmother provided the social worker with information regarding maternal relatives for ICWA notice.

On May 3, 2017, the social worker spoke with paternal grandfather, who stated there might be some Indian ancestry in his family, but he did not have any additional information and did not know the tribe with which he might be affiliated. He gave the social worker information about his relatives.

On May 4, 2017, the Department sent ICWA notices to the BIA and the Secretary of the Interior. As of the May 23, 2017, jurisdiction/disposition hearing, the Department had not received responses to those notices.

On May 25, 2017, at father's arraignment hearing, the juvenile court asked the parents' counsel for any ICWA information. Father's counsel stated that father informed counsel that he "might have some possible heritage, but he did not know a tribe or have any additional information." Mother's counsel reminded the juvenile court that mother stated at the detention hearing that she might have Indian ancestry and the Department was going to interview maternal great-grandmother.

The court responded that the Department had interviewed maternal great-grandmother and she was unaware of any Indian ancestry in her family.

The juvenile court found there was no reason to know the child was an Indian child. The court explained that although father suspected he had Indian ancestry, he had provided no details, and there was no information concerning any particular tribe. It did not order the Department to provide notice to any tribe or to the BIA.

At the July 3, 2017, jurisdiction/disposition hearing, the juvenile court asked mother's counsel and father's counsel if there was any new ICWA information. Both stated there was no new information. The Department's counsel stated that the Department had not received a response from the BIA. The court found that there was no reason to know this case was governed by ICWA, but stated it would continue its inquiry.

On February 6, 2019, father filed a Parental Notification of Indian Status form in I.M.'s case.<sup>5</sup> Father reported that he may have Indian ancestry in the Blackfoot<sup>6</sup> tribe, through "PGM" Addie A.

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<sup>5</sup> We grant the Department's request that we judicially notice father's Parental Notification of Indian Status form.

<sup>6</sup> "[T]here is frequently confusion between the Blackfeet tribe, which is federally recognized, and the related Blackfoot tribe which is found in Canada and thus not entitled to notice of dependency proceedings. When Blackfoot heritage is claimed, part of the Agency's duty of inquiry is to clarify whether the parent is actually claiming Blackfoot or Blackfeet heritage so that it can discharge its additional duty to notice the relevant tribes." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1198.)

At the child's February 22, 2019, detention hearing on the section 387 petition, the juvenile court asked mother's counsel and father's counsel if there was any new ICWA information. Both stated there was no new information.

In the Department's April 15, 2019, jurisdiction/disposition report, the Department reported on its ICWA investigation. On February 12, 2019, a social worker spoke with paternal grandfather concerning his family's Indian heritage in the Blackfoot tribe. Paternal grandfather said that "he already went through this with his son [father], that they don't have any America Indian Heritage: Blackfoot and his mother Addie A[.] also does not have any American Indian Heritage."

The social worker explained to paternal grandfather that he needed to speak with paternal great-grandmother Addie A. concerning her Indian ancestry. Paternal grandfather said that he did not have a contact number for her, but if she called, he would give her the social worker's contact information. Paternal grandfather provided the social worker with family background information.

On February 20, 2019, the social worker spoke with paternal grandfather about paternal great-grandmother. Paternal grandfather stated that paternal great-grandmother had called him and he told her about the social worker and provided the social worker's information. Paternal great-grandmother told paternal grandfather that she was not going to contact the Department. Paternal great-grandmother did not provide paternal grandfather with any information concerning the family's Indian ancestry. Paternal grandfather was unable to provide the social worker with a telephone number for paternal

great-grandmother, explaining that she had called him from a “private number.”

The Department attached to its report a March 8, 2019, letter from the Blackfeet tribe’s ICWA Program coordinator responding to the Department’s notice concerning I.M. The coordinator reported that she could not find I.M. on the tribal rolls and I.M. was not eligible for enrollment.

### III. DISCUSSION

Mother contends the Department’s inquiry into the child’s potential Indian ancestry was inadequate and father’s claim of ancestry in the Blackfoot tribe in I.M.’s case “should have triggered a new inquiry in [the child’s] case because the ICWA notices mailed on [the child’s] behalf on May 3, 2017[,] reflected an unknown Indian tribe and did not include notice to the Blackfeet Tribe.” We disagree.

#### A. *Legal Principles and Standards of Review*

Pursuant to ICWA, “[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking . . . termination of parental rights to[ ] an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe” of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); *In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) “As the Supreme Court recently explained, notice to Indian tribes is central to effectuating ICWA’s purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so,



whether to intervene in or exercise jurisdiction over the matter. (*In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 8[–]9.)” (*In re Michael V.* (2016) 3 Cal.App.5th 225, 232.)

We review a challenge to the Department’s inquiry into a child’s Indian ancestry for substantial evidence. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430.) We likewise review a juvenile court’s finding whether proper notice was given under ICWA for substantial evidence. (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251.)

## B. *Analysis*

### 1. Inquiry

“Juvenile courts and child protective agencies have ‘an affirmative and continuing duty to inquire’ whether a child for whom a section 300 petition has been filed is or may be an Indian child. (§ 224.3, subd. (a); see *In re M.R.* (2017) 7 Cal.App.5th 886, 904 . . . .) If the court or social worker ‘knows or has reason to know’ the child is or may be an Indian child, the social worker ‘is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members’ and ‘any other person that reasonably can be expected to have information regarding the child’s membership status or eligibility’ in order to ‘gather the information required’ in section 224.2, subdivision (a)(5). (§ 224.3, subd. (c); *Michael V.*, *supra*, 3 Cal.App.5th at p. 233; *In re K.R.* (2018) 20 Cal.App.5th 701, 706–

707 . . . ; Cal. Rules of Court, rule 5.481(a)(4)(A).)”<sup>7</sup> (*In re N.G.* (2018) 27 Cal.App.5th 474, 481.) “However, neither the court nor [the Department] is required to conduct a comprehensive investigation into the minor’s Indian status. (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1161 . . . ; *In re Levi U.* [(2000)] 78 Cal.App.4th [191,] 199 [no duty to ‘cast about’ for information].)” (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39.)

a. Mother

Mother contends that the Department’s inquiry into the child’s possible Indian ancestry was inadequate because, although the record reflects the Department contacted maternal great-grandmother Silvia M., it fails to show the Department contacted other maternal relatives who might have knowledge of the family’s Indian ancestry, such as mother’s parents, her siblings, and her cousin. Also, because mother was a dependent when this case was filed, the Department could have reviewed her case for ICWA and relative contact information.

In her Parental Notification of Indian Status form, mother claimed that she was “informed by [the] family” that she had Indian ancestry. She identified a single family member, maternal great-grandmother, as the person who could provide tribal information. Mother did not say that her parents, siblings, or cousin could provide Indian ancestry information, and there is no requirement in ICWA or related California law that a child services agency interview every known family member.

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<sup>7</sup> Sections 224.2 and 224.3 were repealed and revised as sections 224.3 and 224.2, respectively. (Stats. 2018, ch. 833, §§ 4–7.) The revisions do not affect the outcome of this appeal.

In its ICWA investigation, the Department interviewed mother and maternal great-grandmother about Indian ancestry in mother's family. Mother stated she had no information about Indian ancestry and maternal great-grandmother said she was unaware of any Indian ancestry. At hearings over the following 21 plus months, the juvenile court asked mother's counsel if there was any new information concerning possible Indian ancestry. Mother's counsel said there was not. (*In re Levi U.*, *supra*, 78 Cal.App.4th at pp. 198–199 [“Although in the first instance it is the duty of the juvenile court to attempt to ascertain the identity of one's claimed tribal affiliation, if appellant had additional information suggesting the minor was a member of a particular tribe, or if she had evidence indicating the minor was eligible for membership in one such tribe, then appellant should have tendered that information to the court”].) The Department's interviews of mother and maternal great-grandmother are substantial evidence of a “meaningful inquiry” under ICWA. (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 788; *In re. C.Y.*, *supra*, 208 Cal.App.4th at p. 41 [finding social services department “must inquire as to possible Indian ancestry and act on any information it receives, but it has no duty to conduct an extensive independent investigation for information”].)

b. Father

Mother contends the Department's inquiry into father's family's Indian ancestry “could have been broader.” She acknowledges that the Department interviewed paternal grandfather about the family's potential Indian ancestry at the outset of the case and again after father stated in I.M.'s case that

he might have Indian ancestry in the Blackfoot tribe—when it also unsuccessfully attempted to contact paternal great-grandmother Addie A.—but finds it “odd” that the Department did not question Nicole M., the child’s caretaker, about the family’s Indian ancestry.

To the extent mother challenges the adequacy of the Department’s inquiry of father’s Indian ancestry, we conclude that the Department’s interviews of paternal grandfather are substantial evidence of a “meaningful inquiry” under ICWA. (*In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 788.) The Department twice interviewed paternal grandfather. Paternal grandfather initially said there might be Indian ancestry, but could not provide further information. Later, paternal grandfather denied Indian ancestry, saying that paternal great-grandmother Addie A., whom father identified in I.M.’s case, had no Indian ancestry. Nevertheless, the Department attempted to contact paternal great-grandmother through paternal grandfather, but she declined to cooperate. At hearings, father’s counsel told the juvenile court that there was no new ICWA information. (*In re Levi U.*, *supra*, 78 Cal.App.4th at pp. 198–199 [parents have a duty to tender ICWA information to the court].)

## B. Notice

“When a court ‘knows or has reason to know that an Indian child is involved’ in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child’s tribe notice of the pending proceedings and its right to intervene. [Citations.] Alternatively, if there is insufficient reason to believe a child is

an Indian child, notice need not be given. [Citations.]” (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538.)

Based on the Department’s investigation in the child’s case of father’s statement in I.M.’s case that he might have Indian ancestry in the Blackfoot tribe, as just described, there was insufficient reason to believe the child was an Indian child. Accordingly, notice need not have been given. (*In re Shane G., supra*, 166 Cal.App.4th at p. 1538.)

#### **IV. DISPOSITION**

The order is affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

BAKER, J.